

SECOND REGULAR SESSION

HOUSE BILL NO. 1662

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE RIZZO.

Read 1st time January 28, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

4340L.011

AN ACT

To repeal section 143.451, RSMo, and to enact in lieu thereof one new section relating to investment funds service corporations.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 143.451, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 143.451, to read as follows:

143.451. 1. Missouri taxable income of a corporation shall include all income derived from sources within this state.

2. A corporation described in subdivision (1) of subsection 1 of section 143.441 shall include in its Missouri taxable income all income from sources within this state, including that from the transaction of business in this state and that from the transaction of business partly done in this state and partly done in another state or states. However:

(1) Where income results from a transaction partially in this state and partially in another state or states, and income and deductions of the portion in the state cannot be segregated, then such portions of income and deductions shall be allocated in this state and the other state or states as will distribute to this state a portion based upon the portion of the transaction in this state and the portion in such other state or states.

(2) The taxpayer may elect to compute the portion of income from all sources in this state in the following manner:

(a) The income from all sources shall be determined as provided, excluding therefrom the figures for the operation of any bridge connecting this state with another state.

(b) The amount of sales which are transactions wholly in this state shall be added to one-half of the amount of sales which are transactions partly within this state and partly without this state, and the amount thus obtained shall be divided by the total sales or in cases where sales

19 do not express the volume of business, the amount of business transacted wholly in this state
20 shall be added to one-half of the amount of business transacted partly in this state and partly
21 outside this state and the amount thus obtained shall be divided by the total amount of business
22 transacted, and the net income shall be multiplied by the fraction thus obtained, to determine the
23 proportion of income to be used to arrive at the amount of Missouri taxable income. The
24 investment or reinvestment of its own funds, or sale of any such investment or reinvestment,
25 shall not be considered as sales or other business transacted for the determination of said
26 fraction.

27 (3) For the purposes of this section, a transaction involving the sale of tangible property
28 is:

29 (a) "Wholly in this state" if both the seller's shipping point and the purchaser's
30 destination point are in this state;

31 (b) "Partly within this state and partly without this state" if the seller's shipping point is
32 in this state and the purchaser's destination point is outside this state, or the seller's shipping point
33 is outside this state and the purchaser's destination point is in this state;

34 (c) Not "wholly in this state" or not "partly within this state and partly without this state"
35 only if both the seller's shipping point and the purchaser's destination point are outside this state;

36 (d) For purposes of this subdivision the purchaser's destination point shall be determined
37 without regard to the FOB point or other conditions of the sale, and the seller's shipping point
38 is determined without regard to the location of the seller's principle office or place of business.

39 (4) For purposes of this subsection, the following words shall, unless the context
40 otherwise requires, have the following meaning:

41 (a) "Administration services" include, but are not limited to, clerical, fund or shareholder
42 accounting, participant record keeping, transfer agency, bookkeeping, data processing, custodial,
43 internal auditing, legal and tax services performed for an investment company;

44 (b) "Affiliate", the meaning as set forth in 15 U.S.C. Section 80a- 2(a)(3)(C), as may be
45 amended from time to time;

46 (c) "Distribution services" include, but are not limited to, the services of advertising,
47 servicing, marketing, underwriting or selling shares of an investment company, but, in the case
48 of advertising, servicing or marketing shares, only where such service is performed by a person
49 who is, or in the case of a closed end company, was, either engaged in the services of
50 underwriting or selling investment company shares or affiliated with a person that is engaged in
51 the service of underwriting or selling investment company shares. In the case of an open end
52 company, such service of underwriting or selling shares must be performed pursuant to a contract
53 entered into pursuant to 15 U.S.C. Section 80a-15(b), as from time to time amended;

54 (d) "Investment company", any person registered under the federal Investment Company

55 Act of 1940, as amended from time to time, (the act) or a company which would be required to
56 register as an investment company under the act except that such person is exempt to such
57 registration pursuant to Section 80a-3(c)(1) of the act;

58 (e) "Investment funds service corporation" includes any corporation or S corporation
59 doing business in the state which derives more than fifty percent of its gross income in the
60 ordinary course of business from the provision directly or indirectly of management, distribution
61 or administration services to or on behalf of an investment company or from trustees, sponsors
62 and participants of employee benefit plans which have accounts in an investment company. An
63 investment funds service corporation shall include any corporation or S corporation providing
64 management services as an investment advisory firm registered under Section 203 of the
65 Investment Advisors Act of 1940, as amended from time to time, regardless of the percentage
66 of gross revenues consisting of fees from management services provided to or on behalf of an
67 investment company;

68 (f) "Management services" include but are not limited to, the rendering of investment
69 advice directly or indirectly to an investment company making determinations as to when sales
70 and purchases of securities are to be made on behalf of the investment company, or the selling
71 or purchasing of securities constituting assets of an investment company, and related activities,
72 but only where such activity or activities are performed:

73 a. Pursuant to a contract with the investment company entered into pursuant to 15 U.S.C.
74 Section 80a-15(a), as from time to time amended;

75 b. For a person that has entered into such contract with the investment company; or

76 c. For a person that is affiliated with a person that has entered into such contract with an
77 investment company;

78 (g) "Qualifying sales", gross income derived from the provision directly or indirectly of
79 management, distribution or administration services to or on behalf of an investment company
80 or from trustees, sponsors and participants of employee benefit plans which have accounts in an
81 investment company. For purposes of this section, gross income is defined as that amount of
82 income earned from qualifying sources without deduction of expenses related to the generation
83 of such income;

84 (h) "Residence", presumptively the fund shareholder's mailing address on the records of
85 the investment company. If, however, the investment company or the investment funds service
86 corporation has actual knowledge that the fund shareholder's primary residence or principal place
87 of business is different than the fund shareholder's mailing address such presumption shall not
88 control. To the extent an investment funds service corporation does not have access to the
89 records of the investment company, the investment funds service corporation may employ
90 reasonable methods to determine the investment company fund shareholder's residence.

91 (5) Notwithstanding other provisions of law to the contrary, **including without**
92 **limitation sections 620.1350 and 620.1355, RSMo**, qualifying sales of an investment funds
93 service corporation, or S corporation, shall be considered wholly in this state only to the extent
94 that the fund shareholders of the investment companies, to which the investment funds service
95 corporation, or S corporation, provide services, are resided in this state. Wholly in this state
96 qualifying sales of an investment funds service corporation, or S corporation, shall be determined
97 as follows:

98 (a) By multiplying the investment funds service corporation's total dollar amount of
99 qualifying sales from services provided to each investment company by a fraction, the numerator
100 of which shall be the average of the number of shares owned by the investment company's fund
101 shareholders resided in this state at the beginning of and at the end of the investment
102 company's taxable year that ends with or within the investment funds service corporation's
103 taxable year, and the denominator of which shall be the average of the number of shares owned
104 by the investment company's fund shareholders everywhere at the beginning of and at the end
105 of the investment company's taxable year that ends with or within the investment funds service
106 corporation's taxable year;

107 (b) A separate computation shall be made to determine the wholly in this state qualifying
108 sales from each investment company. The qualifying sales for each investment company shall
109 be multiplied by the respective percentage of each fund, as calculated pursuant to paragraph (a)
110 of this subdivision. The product of this equation shall result in the wholly in this state qualifying
111 sales. The qualifying sales for each investment company which are not wholly in this state will
112 be considered wholly without this state;

113 (c) To the extent an investment funds service corporation has sales which are not
114 qualifying sales, those nonqualified sales shall be apportioned to this state based on the
115 methodology utilized by the investment funds service corporation without regard to this
116 subdivision.

117 3. Any corporation described in subdivision (1) of subsection 1 of section 143.441
118 organized in this state or granted a permit to operate in this state for the transportation or care
119 of passengers shall report its gross earnings within the state on intrastate business and shall also
120 report its gross earnings on all interstate business done in this state which report shall be subject
121 to inquiry for the purpose of determining the amount of income to be included in Missouri
122 taxable income. The previous sentence shall not apply to a railroad.

123 4. A corporation described in subdivision (2) of subsection 1 of section 143.441 shall
124 include in its Missouri taxable income all income arising from all sources in this state and all
125 income from each transportation service wholly within this state, from each service where the
126 only lines of such corporation used are those in this state, and such proportion of revenue from

127 each service where the facilities of such corporation in this state and in another state or states are
128 used, as the mileage used over the lines of such corporation in the state shall bear to the total
129 mileage used over the lines of such corporation. The taxpayer may elect to compute the portion
130 of income from all sources within this state in the following manner:

131 (1) The income from all sources shall be determined as provided;

132 (2) The amount of investment of such corporation on December thirty-first of each year
133 in this state in fixed transportation facilities, real estate and improvements, plus the value on
134 December thirty-first of each year of any fixed transportation facilities, real estate and
135 improvements in this state leased from any other railroad shall be divided by the sum of the total
136 amount of investment of such corporation on December thirty-first of each year in fixed
137 transportation facilities, real estate and improvements, plus the value on December thirty-first
138 of each year, of any fixed transportation facilities, real estate and improvements leased from any
139 other railroad. Where any fixed transportation facilities, real estate or improvements are leased
140 by more than one railroad, such portion of the value shall be used by each railroad as the rental
141 paid by each shall bear to the rental paid by all lessees. The income shall be multiplied by the
142 fraction thus obtained to determine the proportion to be used to arrive at the amount of Missouri
143 taxable income.

144 5. A corporation described in subdivision (3) of subsection 1 of section 143.441 shall
145 include in its Missouri taxable income one-half of the net income from the operation of a bridge
146 between this and another state. If any such bridge is owned or operated by a railroad corporation
147 or corporations, or by a corporation owning a railroad corporation using such bridge, then the
148 figures for operation of such bridge may be included in the return of such railroad or railroads;
149 or if such bridge is owned or operated by any other corporation which may now or hereafter be
150 required to file an income tax return, one-half of the income or loss to such corporation from
151 such bridge may be included in such return by adding or subtracting same to or from another net
152 income or loss shown by the return.

153 6. A corporation described in subdivision (4) of subsection 1 of section 143.441 shall
154 include in its Missouri taxable income all income arising from all sources within this state.
155 Income shall include revenue from each telephonic or telegraphic service rendered wholly within
156 this state; from each service rendered for which the only facilities of such corporation used are
157 those in this state; and from each service rendered over the facilities of such corporation in this
158 state and in other state or states, such proportion of such revenue as the mileage involved in this
159 state shall bear to the total mileage involved over the lines of said company in all states. The
160 taxpayer may elect to compute the portion of income from all sources within this state in the
161 following manner:

162 (1) The income from all sources shall be determined as provided;

163 (2) The amount of investment of such corporation on December thirty-first of each year
164 in this state in telephonic or telegraphic facilities, real estate and improvements thereon, shall be
165 divided by the amount of the total investment of such corporation on December thirty-first of
166 each year in telephonic or telegraphic facilities, real estate and improvements. The income of
167 the taxpayer shall be multiplied by fraction thus obtained to determine the proportion to be used
168 to arrive at the amount of Missouri taxable income.

169 7. From the income determined in subsections 2, 3, 4, 5 and 6 of this section to be from
170 all sources within this state shall be deducted such of the deductions for expenses in determining
171 Missouri taxable income as were incurred in this state to produce such income and all losses
172 actually sustained in this state in the business of the corporation.

173 8. If a corporation derives only part of its income from sources within Missouri, its
174 Missouri taxable income shall only reflect the effect of the following listed deductions to the
175 extent applicable to Missouri. The deductions are: (a) its deduction for federal income taxes
176 pursuant to section 143.171, and (b) the effect on Missouri taxable income of the deduction for
177 net operating loss allowed by Section 172 of the Internal Revenue Code. The extent applicable
178 to Missouri shall be determined by multiplying the amount that would otherwise affect Missouri
179 taxable income by the ratio for the year of the Missouri taxable income of the corporation for the
180 year divided by the Missouri taxable income for the year as though the corporation had derived
181 all of its income from sources within Missouri. For the purpose of the preceding sentence,
182 Missouri taxable income shall not reflect the listed deductions.

183 9. Any investment funds service corporation organized as a corporation or S corporation
184 which has any shareholders resided in this state shall be subject to Missouri income tax as
185 provided in this chapter.